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21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA

23 R. BOWMAN and D. MOUSSEAU,
24 individually, and on behalf of all others
25 similarly situated,

26 Plaintiff,

27 v.

28 BURNT ENDS, LLC, a California
Limited Liability Company;
RODERICK C. FLINT, an individual;
JOSHUA M. FINE, an individual; and
DOE 1 through and including DOE 10,

Defendants.

Case No: 2:17-cv-05782-RGK (SSx)

*Assigned to Hon. R. Gary Klausner
and Magistrate Judge Suzanne H.
Segal*

**STIPULATED PROTECTIVE
ORDER**

1
2 1. A. PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public disclosure
5 and from use for any purpose other than prosecuting this litigation may be warranted.
6 Accordingly, the parties hereby stipulate to and petition the Court to enter the
7 following Stipulated Protective Order. The parties acknowledge that this Order does
8 not confer blanket protections on all disclosures or responses to discovery and that the
9 protection it affords from public disclosure and use extends only to the limited
10 information or items that are entitled to confidential treatment under the applicable
11 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
12 that this Stipulated Protective Order does not entitle them to file confidential
13 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
14 followed and the standards that will be applied when a party seeks permission from
15 the court to file material under seal.

16 B. GOOD CAUSE STATEMENT

17 This action is likely to involve commercial, financial, technical and/or
18 proprietary information for which special protection from public disclosure and from
19 use for any purpose other than prosecution of this action is warranted. Such
20 confidential and proprietary materials and information consist of, among other things,
21 confidential business or financial information, information regarding confidential
22 business practices, or other confidential research, development, or commercial
23 information (including information implicating privacy rights of third parties),
24 information otherwise generally unavailable to the public, or which may be privileged
25 or otherwise protected from disclosure under state or federal statutes, court rules, case
26 decisions, or common law. Accordingly, to expedite the flow of information, to
27 facilitate the prompt resolution of disputes over confidentiality of discovery materials,
28 to adequately protect information the parties are entitled to keep confidential, to

1 ensure that the parties are permitted reasonable necessary uses of such material in
2 preparation for and in the conduct of trial, to address their handling at the end of the
3 litigation, and serve the ends of justice, a protective order for such information is
4 justified in this matter. It is the intent of the parties that information will not be
5 designated as confidential for tactical reasons and that nothing be so designated
6 without a good faith belief that it has been maintained in a confidential, non-public
7 manner, and there is good cause why it should not be part of the public record of this
8 case.

9
10 2. DEFINITIONS

11 2.1. Action: this pending federal lawsuit, entitled *Bowman v. Burnt Ends,*
12 *LLC.*, Case No. 2:17-cv-05782-RGK (SS)

13 2.2. Challenging Party: a Party or Non-Party that challenges the designation
14 of information or items under this Order.

15 2.3. “CONFIDENTIAL” Information or Items: information (regardless of
16 how it is generated, stored or maintained) or tangible things that qualify for protection
17 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
18 Cause Statement.

19 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as their
20 support staff).

21 2.5. Designating Party: a Party or Non-Party that designates information or
22 items that it produces in disclosures or in responses to discovery as
23 “CONFIDENTIAL.”

24 2.6. Disclosure or Discovery Material: all items or information, regardless of
25 the medium or manner in which it is generated, stored, or maintained (including,
26 among other things, testimony, transcripts, and tangible things), that are produced or
27 generated in disclosures or responses to discovery in this matter.

28 2.7. Expert: a person with specialized knowledge or experience in a matter

1 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
2 expert witness or as a consultant in this Action.

3 2.8. House Counsel: attorneys who are employees of a party to this Action.
4 House Counsel does not include Outside Counsel of Record or any other outside
5 counsel.

6 2.9. Non-Party: any natural person, partnership, corporation, association, or
7 other legal entity not named as a Party to this action.

8 2.10. Outside Counsel of Record: attorneys who are not employees of a party
9 to this Action but are retained to represent or advise a party to this Action and have
10 appeared in this Action on behalf of that party or are affiliated with a law firm which
11 has appeared on behalf of that party, and includes support staff.

12 2.11. Party: any party to this Action, including all of its officers, directors,
13 employees, consultants, retained experts, and Outside Counsel of Record (and their
14 support staffs).

15 2.12. Producing Party: a Party or Non-Party that produces Disclosure or
16 Discovery Material in this Action.

17 2.13. Professional Vendors: persons or entities that provide litigation support
18 services (e.g., photocopying, videotaping, translating, preparing exhibits or
19 demonstrations, and organizing, storing, or retrieving data in any form or medium)
20 and their employees and subcontractors.

21 2.14. Protected Material: any Disclosure or Discovery Material that is
22 designated as "CONFIDENTIAL."

23 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material
24 from a Producing Party.

25 26 3. SCOPE

27 3.1 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or extracted

1 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
2 Protected Material; and (3) any testimony, conversations, or presentations by Parties
3 or their Counsel that might reveal Protected Material.

4 3.2 Any use of Protected Material at trial shall be governed by the orders of
5 the trial judge. This Order does not govern the use of Protected Material at trial.

6 3.3 After this Stipulated Protective Order has been signed by counsel for all
7 Appearing Parties, it shall be presented to the Court for entry. Counsel agree to be
8 bound by the terms set forth herein with regard to any Confidential Materials that have
9 been produced before the Court signs this Stipulation and Protective Order.
10

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations
13 imposed by this Order shall remain in effect until a Designating Party agrees
14 otherwise in writing or a court order otherwise directs. Final disposition shall be
15 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
16 or without prejudice; and (2) final judgment herein after the completion and
17 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
18 including the time limits for filing any motions or applications for extension of time
19 pursuant to applicable law.
20

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1. Exercise of Restraint and Care in Designating Material for Protection.
23 Each Party or Non-Party that designates information or items for protection under this
24 Order must take care to limit any such designation to specific material that qualifies
25 under the appropriate standards. The Designating Party must designate for protection
26 only those parts of material, documents, items, or oral or written communications that
27 qualify so that other portions of the material, documents, items, or communications
28 for which protection is not warranted are not swept unjustifiably within the ambit of

1 this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations
3 that are shown to be clearly unjustified or that have been made for an improper
4 purpose (e.g., to unnecessarily encumber the case development process or to impose
5 unnecessary expenses and burdens on other parties) may expose the Designating Party
6 to sanctions.

7 If it comes to a Designating Party's attention that information or items that it
8 designated for protection do not qualify for protection, that Designating Party must
9 promptly notify all other Parties that it is withdrawing the inapplicable designation.

10 5.2. Manner and Timing of Designations. Except as otherwise provided in
11 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
12 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
13 under this Order must be clearly so designated before the material is disclosed or
14 produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic
17 documents, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), that the Producing Party affix at a minimum, the legend
19 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
20 contains protected material. If only a portion or portions of the material on a page
21 qualifies for protection, the Producing Party also must clearly identify the protected
22 portion(s) (e.g., by making appropriate markings in the margins).

23 A Party or Non-Party that makes original documents available for inspection
24 need not designate them for protection until after the inspecting Party has indicated
25 which documents it would like copied and produced. During the inspection and before
26 the designation, all of the material made available for inspection shall be deemed
27 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
28 copied and produced, the Producing Party must determine which documents, or

1 portions thereof, qualify for protection under this Order. Then, before producing the
2 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
3 to each page that contains Protected Material. If only a portion or portions of the
4 material on a page qualifies for protection, the Producing Party also must clearly
5 identify the protected portion(s) (e.g., by making appropriate markings in the
6 margins).

7 (b) for testimony given in depositions that the Designating Party identify
8 the Disclosure or Discovery Material on the record, before the close of the deposition
9 all protected testimony.

10 (c) for information produced in some form other than documentary and
11 for any other tangible items, that the Producing Party affix in a prominent place on the
12 exterior of the container or containers in which the information is stored the legend
13 “CONFIDENTIAL.” If only a portion or portions of the information warrants
14 protection, the Producing Party, to the extent practicable, shall identify the protected
15 portion(s).

16 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
17 failure to designate qualified information or items does not, standing alone, waive the
18 Designating Party's right to secure protection under this Order for such material. Upon
19 timely correction of a designation, the Receiving Party must make reasonable efforts
20 to assure that the material is treated in accordance with the provisions of this Order.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
24 designation of confidentiality at any time that is consistent with the Court's
25 Scheduling Order.

26 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
27 resolution process under Local Rule 37.1 et seq.

28 6.3. The burden of persuasion in any such challenge proceeding shall be on

1 the Designating Party. Frivolous challenges, and those made for an improper purpose
2 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
3 expose the Challenging Party to sanctions. Unless the Designating Party has waived or
4 withdrawn the confidentiality designation, all parties shall continue to afford the
5 material in question the level of protection to which it is entitled under the Producing
6 Party's designation until the Court rules on the challenge.

7
8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1. Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a Non-Party in connection with this
11 Action only for prosecuting, defending, or attempting to settle this Action. Such
12 Protected Material may be disclosed only to the categories of persons and under the
13 conditions described in this Order. When the Action has been terminated, a Receiving
14 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a
16 location and in a secure manner that ensures that access is limited to the persons
17 authorized under this Order.

18 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless
19 otherwise ordered by the court or permitted in writing by the Designating Party, a
20 Receiving Party may disclose, provided that all social security and drivers license
21 numbers have been redacted, any information or item designated "CONFIDENTIAL"
22 only to:

23 (a) the Receiving Party's Outside Counsel of Record in this Action, as
24 well as employees of said Outside Counsel of Record to whom it is reasonably
25 necessary to disclose the information for this Action;

26 (b) the officers, directors, and employees (including House Counsel) of
27 the Receiving Party to whom disclosure is reasonably necessary for this Action;

28 (c) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this Action and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

4 (e) court reporters and their staff;

5 (f) professional jury or trial consultants, mock jurors, and Professional
6 Vendors to whom disclosure is reasonably necessary for this Action and who have
7 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (g) the author or recipient of a document containing the information or a
9 custodian or other person who otherwise possessed or knew the information;

10 (h) during their depositions, witnesses, and attorneys for witnesses, in the
11 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
12 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
13 not be permitted to keep any confidential information unless they sign the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
15 by the Designating Party or ordered by the court. Pages of transcribed deposition
16 testimony or exhibits to depositions that reveal Protected Material may be separately
17 bound by the court reporter and may not be disclosed to anyone except as permitted
18 under this Stipulated Protective Order; and

19 (i) any mediator or settlement officer, and their supporting personnel,
20 mutually agreed upon by any of the parties engaged in settlement discussions.

21
22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
23 OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation
25 that compels disclosure of any information or items designated in this Action as
26 “CONFIDENTIAL,” that Party must:

27 (a) promptly notify in writing the Designating Party. Such notification
28 shall include a copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order
2 to issue in the other litigation that some or all of the material covered by the subpoena
3 or order is subject to this Protective Order. Such notification shall include a copy of
4 this Stipulated Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be
6 pursued by the Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served with
8 the subpoena or court order shall not produce any information designated in this
9 action as "CONFIDENTIAL" before a determination by the court from which the
10 subpoena or order issued, unless the Party has obtained the Designating Party's
11 permission. The Designating Party shall bear the burden and expense of seeking
12 protection in that court of its confidential material and nothing in these provisions
13 should be construed as authorizing or encouraging a Receiving Party in this Action to
14 disobey a lawful directive from another court.

15
16 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
17 PRODUCED IN THIS LITIGATION

18 (a) The terms of this Order are applicable to information produced by a
19 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
20 produced by Non-Parties in connection with this litigation is protected by the
21 remedies and relief provided by this Order. Nothing in these provisions should be
22 construed as prohibiting a Non-Party from seeking additional protections.

23 (b) In the event that a Party is required, by a valid discovery request, to
24 produce a Non-Party's confidential information in its possession, and the Party is
25 subject to an agreement with the Non-Party not to produce the Non-Party's
26 confidential information, then the Party shall:

27 (1) promptly notify in writing the Requesting Party and the Non-Party
28 that some or all of the information requested is subject to a confidentiality agreement

1 with a Non-Party;

2 (2) promptly provide the Non-Party with a copy of the Stipulated
3 Protective Order in this Action, the relevant discovery request(s), and a reasonably
4 specific description of the information requested; and

5 (3) make the information requested available for inspection by the
6 Non-Party, if requested.

7 (c) If the Non-Party fails to seek a protective order from this court within
8 14 days of receiving the notice and accompanying information, the Receiving Party
9 may produce the Non-Party's confidential information responsive to the discovery
10 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not
11 produce any information in its possession or control that is subject to the
12 confidentiality agreement with the Non-Party before a determination by the court.
13 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
14 of seeking protection in this court of its Protected Material.

15
16 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
18 Protected Material to any person or in any circumstance not authorized under this
19 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
20 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
21 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
22 persons to whom unauthorized disclosures were made of all the terms of this Order,
23 and (d) request such person or persons to execute the "Acknowledgment and
24 Agreement to Be Bound" that is attached hereto as Exhibit A.

25
26 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
27 PROTECTED MATERIAL

28 When a Producing Party gives notice to Receiving Parties that certain

1 inadvertently produced material is subject to a claim of privilege or other protection,
2 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
3 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
4 may be established in an e-discovery order that provides for production without prior
5 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
6 parties reach an agreement on the effect of disclosure of a communication or
7 information covered by the attorney-client privilege or work product protection, the
8 parties may incorporate their agreement in the stipulated protective order submitted to
9 the court.

10 11 12. MISCELLANEOUS

12 12.1. Right to Further Relief. Nothing in this Order abridges the right of any
13 person to seek its modification by the Court in the future.

14 12.2. Right to Assert Other Objections. By stipulating to the entry of this
15 Protective Order no Party waives any right it otherwise would have to object to
16 disclosing or producing any information or item on any ground not addressed in this
17 Stipulated Protective Order. Similarly, no Party waives any right to object on any
18 ground to use in evidence of any of the material covered by this Protective Order.

19 12.3. Filing Protected Material. A Party that seeks to file under seal any
20 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
21 only be filed under seal pursuant to a court order authorizing the sealing of the
22 specific Protected Material at issue. If a Party's request to file Protected Material
23 under seal is denied by the court, then the Receiving Party may file the information in
24 the public record unless otherwise instructed by the court.

25 26 13. FINAL DISPOSITION

27 After the final disposition of this Action, as defined in paragraph 4, within 60
28 days of a written request by the Designating Party, each Receiving Party must return

1 all Protected Material to the Producing Party or destroy such material. As used in this
2 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
3 summaries, and any other format reproducing or capturing any of the Protected
4 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
5 must submit a written certification to the Producing Party (and, if not the same person
6 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
7 category, where appropriate) all the Protected Material that was returned or destroyed
8 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
9 compilations, summaries or any other format reproducing or capturing any of the
10 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
11 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
12 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
13 attorney work product, and consultant and expert work product, even if such materials
14 contain Protected Material. Any such archival copies that contain or constitute
15 Protected Material remain subject to this Protective Order as set forth in Section 4
16 (DURATION).

17
18 14. Any violation of this Order may be punished by any and all appropriate
19 measures including, without limitation, contempt proceedings and/or monetary
20 sanctions.

21
22 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

23
24 DATED: August 3, 2018

HARRIS & RUBLE

25
26 /s/ Alan Harris

Alan Harris

Attorneys for Plaintiffs

27 R. BOWMAN and D. MOUSSEAU
28

1
2 DATED: August 3, 2018

LECLAIRRYAN

3
4 /s/ Brian C. Vanderhoof
5 Brian C. Vanderhoof
6 Attorneys for Defendants
BURNT ENDS, LLC, RODERICK C. FLINT,
and JOSHUA M. FINE

7
8 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

9 DATED: 8/14/18

10 /S/
11 Suzanne H. Segal
12 United States Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order
6 that was issued by the United States District Court for the Central District of
7 California on ____ in the case of *Bowman v. Burnt Ends, LLC*, Case No. 2:17-cv-
8 05782-RGK (SS). I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is
12 subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action. I hereby appoint _____ [print or
18 type full name] of _____ [print or type full address and
19 telephone number] as my California agent for service of process in connection with
20 this action or any proceedings related to enforcement of this Stipulated Protective
21 Order.

22
23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____